IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.3256 OF 1989

M/s.Biochem Pharmaceuticals Industries .. Petitioner
V/s
Asstt.Collector of Customs & Anr. .. Respondents

Mr.Prakash Shah i/by M/s.DSK Legal for Petitioner.
Mr.P.S.Jetly with Mr.R.C.Master for the Respondents.

CORAM: S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 03.02.2005.

P.C.:

1. By this Petition the Petitioner is challenging the order of assessment passed by the Assistant Collector of Customs dated 30.9.1989. The brief facts are that the Petitioner had imported consignment of Gonadotraphon FSH 1000U (Serum Gonadotraphin) of the value of Rs.1,68,938/-. It appears that the Petitioner had originally claimed the assessment under heading 3002.00 for the purpose of computing additional duty. The Assistant Collector of Customs in the said order dated 30.9.1989 came to the conclusion that the said products would fall under entry 3003.10 and accordingly passed the assessment order.

2. The learned Counsel for the Petitioner has brought to our notice the relevant provisions of said entry 3003.10 which deals with the Medicament including veterinary medicaments, and the said entry 3003.10 reads as under:-

3003.10

Patent or proprietary medicaments, other than those dedicaments which are exclusively Ayurvedic, Unani, Diddha, Homoeopathic or Bio-chemic.

3. The learned Counsel for the Petitioner brought to our notice that it is entirely erroneous on the part of the Assessing Authority to assess the said product under entry 3003.10. Chapter 30 dealing with the Pharmaceutical Products, in Note 2(ii) defines "Patent or proprietary medicaments" as under:-

"Patent or proprietary medicaments means any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both a name which is not specified in a monograph, in a phrmacopoeia, Formulary or other publications, namely:-

(a) The Indian Pharmacopoeia;
(b) The International Pharmacopoeia;
(c) The National Formulary of India;
(d) The British Pharmacopoeia;
(e) The British Pharmaceutical Codex;
(f) The British Veterinary Codex;
(g) The United States Pharmacopoeia;
(h) The National Formulary of the U.S.A.;
(i) The Dental Formulary of the U.S.A.; and
(j) The State Pharmacopoeia of the U.S.S.R. "

4. Therefore the contention of the learned Counsel for the Petitioner is that as far as **Serum Gonadotraphin** is concerned, the same is clearly mentioned in British Pharmacopoeia as indicated in Exhibit ‘A’ page 14 of the Petition. Under these circumstances, the learned

Counsel for the Petitioner submits that the Assessing Officer has ex-facie erred in holding the said product to be falling under entry 3003.10, as it should be a product not in the aforesaid pharmocopoeia.

5. The learned Counsel for the Respondents, on the other hand sought to justify that the aforesaid products would fall under entry 3003.10 and accordingly supported the order of the Assessing Authority.

6. Having regard to the definition of "Patent or proprietary medicaments" which is quoted hereinabove, we are clearly of the view that the said product cannot fall under entry 3003.10 at all, since the very same entry 3003.10 clearly indicates that it would be patent or proprietary medicaments other than those medicaments which are exclusively Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic. As the said product is mentioned in British Pharmocopoeia, it cannot be a "Patent or Proprietary medicaments".

7. Under the aforesaid facts and circumstances, we hold that the the impugned order of assessment is patently erroneous and ex-facie it cannot be sustained. Hence, the impugned order dated 30.9.1989 is quashed and set aside. Rule is accordingly made absolute in terms of prayer clause (a).

8. It is also made clear that it is open to the Excise Authority to issue a notice to the Petitioner to show cause as to why the said drugs/products should not be classified under any other heading as they may deem fit and proper.

(S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)